

S. SELLAPPA

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v.

CHAIRMAN, MIC GEMAS BRANCH & ANOR.

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[SUIT NO. 22-460 OF 1987]
12 APRIL 1988

b

CIVIL PROCEDURE: *Injunction - Member of local branch of political party had grievances - To exhaust domestic remedies before applying for injunction.*

This was an application to set aside the interim injunction against the local branch of the Malaysian Indian Congress, a political party from carrying out its activities and to strike out the writ and statement of claim. The respondent/plaintiff had filed a suit praying *inter alia* that the local branch be declared defunct as the constitution had not been complied with.

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Held:

[1] The interim injunction was set aside. The claim against the second defendant was defective as he was wrongly sued as a party. Only a public officer of the society should be named as a party as provided by s. 9(2), Societies Act 1966. The president of the Malaysian Indian Congress was not a public officer within the meaning of the Societies Act 1966.

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[2] The plaintiff had failed to exhaust the domestic remedies provided by the constitution of the Malaysian Indian Congress. Thus, he did not comply with s. 40, Societies Act 1966.

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Cases referred to:

Tharmalingam v. Sambanthan [1961] 27 MLJ 63
Datuk Pasamanickam & Anor. v. Agnes Joseph [1980] 2 MLJ 927

Legislation referred to:

Rules of the High Court 1980, O. 18 r. 19
Societies Act 1966, ss. 9(c), 40

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For the plaintiff/applicant - M.K. Morthi; M/s. Mahadevi Ganeshmurugan & Co.
For the defendants/respondents - K. Ravindran (Pretam Singh with him)

JUDGMENT

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Mustapha Hussain J:

The plaintiff filed the writ on 1 June 1987 together with an *ex parte* summons-in-chambers on a certificate of urgency applying for the following orders:

- (a) an order declaring the Gemas MIC Branch and its committee defunct and restraining the same from convening any meeting forthwith;
- (b) an order declaring 168 new members admitted on 8 November 1986 as null and void;

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- a* (c) an order declaring 31 members whose names did not appear in the last Register of members, 1986 as valid and lawful members; and
- (d) an order restraining the MIC from taking disciplinary action against the plaintiff for resorting to Court action in seeking remedy for his grievances.

Briefly, the grounds for the application were:

- b* (1) that the Gemas Branch of the MIC headed by the 1st defendant did not hold its annual general meeting (AGM) in 1986, by giving the 21 days notice to members as required by Article 21.5 of the MIC constitution;
- (2) that the Gemas Branch had failed to hold the mandatory six committee meetings in the year 1986 as required by Art. 26.1 of the MIC constitution;
- c* (3) that the notice calling for the AGM in 1986 was bad as the Branch had not paid its State and Headquarters dues;
- (4) that the admission of 168 members in 1986 contravened Articles 8.1 and 9.1 as no meeting of the committee was held to approve such admission and was therefore null and void;
- d* (5) that the de-registration and omission of 31 members of the Branch was wrong.

e As the AGM of the Gemas Branch of MIC was scheduled to be held on 3 June 1987, the Court granted the application for interim injunction restraining the MIC Branch Gemas and its office bearers from carrying out any activities or functions as such including convening any meeting whatsoever forthwith pending the disposal of the Suit herein and restraining further the MIC from taking any disciplinary action against the plaintiff for resorting to Court action in seeking remedy for his grievances, subject to the usual undertaking by the plaintiff/applicant to pay damages, with liberty to all parties to apply and costs in the cause.

f As the State MIC assembly, which delegates/representatives from the various Branches in the State have to attend to elect the committee at State level, had been fixed for 19 June 1987, on a certificate of urgency the defendants applied by summons-in-chambers (Encl. 14) to dissolve the interim injunction dated 1 June 1987 at the instance of the plaintiff/applicant, and also to strike out the writ and statement of claim filed by the plaintiff, under O. 18 r. 19 of the Rules of the High Court 1980. This application by the defendants was heard on 4 June 1987 and after full arguments, the Court ordered the interim injunction dated 1 June 1987 be dissolved with costs to the defendants in any event, but on the second prayer of the defendants to strike out the plaintiff's writ and statement of claim the Court ordered the matter to be set down for hearing, which until to-date the parties have not yet or bothered to follow. On the other hand the parties have agreed at RM2,000 being costs to be paid by the plaintiff to the defendants in lieu of taxation on 11 September 1987 (see Encl. 36). The plaintiff paid RM800 and the defendants filed an application (Encl. 38) to examine the plaintiff as to his means of settling the balance of the costs. The plaintiff on 7 April 1988 agreed to pay RM200 per month towards the balance.

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The Court ordered the interim injunction granted on 1 June 1987 to be dissolved on the following grounds: **a**

The MIC Gemas Branch is a political society and registered as such and therefore the provisions of the Societies Act 1966 shall apply. The MIC has its constitution and the members (both parties herein are members) have to abide by the provisions of their constitution. **b**

The 2nd defendant i.e. the President MIC Malaysia was wrongly sued as a party. Section 9(c) of the Societies Act 1966 states that the “public officer” of the society should be the person to be named. In this case it should be the Secretary General of MIC Malaysia, and not the President (Exhibit s. 2 to Encl. 13). As such, the writ and claim against the 2nd defendant is defective. **c**

As regards the allegations and complaints by the plaintiff, the plaintiff did not exhaust all the domestic remedies available and provided for under the MIC constitution. **d**

Article 29 of the MIC constitution sets out that any dispute between members should be reported to the State Congress Committee. And any member aggrieved by the decision of the State Congress Committee could then appeal to the Central Working Committee. **e**

Section 40 of the Societies Act, 1966 makes it incumbent on all members i.e. the plaintiff here to abide by the decision of the Central Working Committee - The case of *Tharmalingam v. Sambanthan* [1961] 27 MLJ 63 is in point. **f**

In fact *Datuk Pasamanickam & Anor. v. Agnes Joseph* [1980] 2 MLJ 92 makes it clear that plaintiff must first refer to the Central Working Committee before resorting to Court proceedings. **g**

In our instant case though the plaintiff had made complaints to the secretary-general of MIC and to the State chairman MIC, this does not amount to a reference to the Central Working Committee. The plaintiff has to wait until he had exhausted all the domestic remedies and avenues. Plaintiff should wait for the decision of the Central Working Committee before coming to the Court. On this point alone, the injunction should be dissolved. **h**

Even on the principle of balance of convenience, it was in favour of the 1st defendant as the MIC Gemas Branch had to hold its AGM before the State MIC assembly and to appoint delegates to the State MIC. **i**

In passing, the plaintiff had made complaint to the general secretary MIC Malaysia on 5 February 1987 about the 31 new members. He had also complained to the State chairman MIC on 2 March 1987 about the new members. **j**

Why must the plaintiff wait until 1 June 1987 just two or three days before the scheduled AGM of the Branch to seek the aid of the Court to obtain the injunction restraining the Branch from holding the meeting? Surely there must be some oblique motive to slap the **k**

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- a* injunction at the last minute, putting the whole machinery of party elections into disarray. It is hoped that the Supreme Court will take the plaintiff to task and disallow any last minute attempt to withdraw the appeal and penalise the plaintiff and the likes of him who are causing political turmoil in the country with costs.

Also found at [1988] 2 CLJ 111

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